

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**CLAYTON BYRD in his official capacity as)
Executive Director of the TENNESSEE)
ALCOHOLIC BEVERAGE COMMISSION,)**

Plaintiff,)

v.)

No. _____

**TENNESSEE WINE AND SPIRITS)
RETAILERS ASSOCIATION,)
KIMBROUGH FINE WINE & SPIRITS,)
TOTAL WINE SPIRITS BEER & MORE,)**

Defendants.)

NOTICE OF REMOVAL

The Defendant Tennessee Wine and Spirits Retailers Association (the “Association”) hereby gives notice pursuant to 28 U.S.C. §1446 of the removal of this action from the Chancery Court for Davidson County, Tennessee, Twentieth Judicial District at Nashville, to the United States District Court for the Middle District of Tennessee. The grounds for removal are as follows:

1. The Plaintiff commenced this action by filing a Complaint for Declaratory Judgment on September 21, 2016, in the Chancery Court for Davidson County. The case was docketed as No. 16-1031-II.
2. The Defendant Association was served on September 26, 2016.

3. True and correct copies of the Complaint and the Summons served upon the Defendant Association are attached as **Exhibit 1**. Copies of all other pleadings or papers that have been filed in this action in the Chancery Court are attached as **Exhibit 2**.

4. This Notice of Removal is timely, having been filed within thirty (30) days after receipt by the Defendant Association of a copy of the Complaint as required under 28 U.S.C. §1446(b). Venue is proper in this Court pursuant to 28 U.S.C. §1441(a). The time for the Defendant Association to answer, move, or otherwise plead has not expired.

5. This case is removable based on this Court's federal question jurisdiction under 28 U.S.C. §1331. The Complaint seeks a declaratory judgment regarding the constitutionality of the residency requirement in Tenn. Code Ann. §57-3-204(b). The Complaint discloses that the constitutional question involves the Commerce Clause of the United States Constitution and the Twenty-First Amendment of the United States Constitution, as set out in Tennessee Attorney General Opinion Nos. 12-59 and 14-83 referenced in paragraph 14 of the Complaint. Copies of those Attorney General Opinions are attached as **Exhibit 3**. The Motion for Judgment on the Pleadings of the Defendant Affluere Investments, Inc. d/b/a Kimbrough Fine Wine & Spirits filed on October 13, 2016, confirms the federal constitutional question at issue. Because this Court has subject matter jurisdiction under 28 U.S.C. §1331 over the federal constitutional questions raised in the Complaint, removal is proper under 28 U.S.C. §1441.

6. Concurrent with the filing of this Notice, the Defendant Association is serving this Notice on counsel for the Plaintiff and for the Co-Defendants and filing a copy of the Notice with the Clerk & Master of the Chancery Court of Davidson County, Tennessee.

7. By filing this Notice of Removal, the Defendant Association does not waive its right to object to service of process, the sufficiency of process, personal jurisdiction, or venue, and specifically reserves its right to assert any defenses and/or objections to which it may be entitled.

Respectfully submitted,

/s/ Richard L. Colbert
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*Attorneys for Defendant, Tennessee
Wine and Spirits Retailers Association*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been served by United States Mail, postage prepaid, upon Sara Beth Myers, Assistant Attorney General, Office of the Attorney General, P. O. Box 20207, Nashville, Tennessee, 37202; Keith C. Dennen, Farris, Bobango, PLC, Bank of America Building, 414 Union Street, Suite 1105, Nashville, Tennessee, 37219 and to Tennessee Fine Wine & Spirits, LLC, c/o CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee, 37929 on this 19th day of October, 2016.

/s/ Richard L. Colbert
Richard L. Colbert